IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 180/2003 WITH
CRIMINAL MISC. APPLICATION NO. 239 /2004.
AND
CRIMINAL MISC. APPLICATION NO. 181/2003 WITH
CRIMINAL MISC. APPLICATION NO. 238/2004.

Dr. (Mrs.) Nora Pereptua
Noronha e D'Costa, resident of
Cansaulim, Goa. .... Applicant.

Versus

1. S T A T E,
through P.I.,
Vasco Police Station,
Vasco-da-Gama, Goa.
2. Shri Santan Colaco,
son of Remedious Colaco,
resident of C/o Al-Eashayer
National Company, P.O. Box
No. 19199, Jeddah, 2305 KSA
(Saudi Arabia). .... Respondents.

Shri M.S. Sonak, Advocate for the Applicant.

Ms. W. Coutinho, Addl. Public Prosecutor for the State/Respondent No.1.

CORAM: N. A. BRITTO, J.

DATE: 16th December, 2004.

ORAL ORDER:

The applicant is the first informant in two State cases, namely C.C.Nos.45/S/97/B and 46/S/97/B. The respondent No.2 is accused no.11 in the first case and accused No.17 in the second case. There is no dispute that the said respondent (hereinafter referred to as the accused) is presently serving with Al-Eashayer National Company, P.O. Box No.19199, Jeddah in Saudi

Arabia.

2. The applicant by these petitions filed under Section 482 of the Code of Criminal Procedure (Code, for short) questions the correctness of the Order dated 3.7.03 of the learned J.M.F.C., Vasco-da-Gama ordering the trial to proceed under the provisions of S.299 of the Code, against the said accused.

Some more facts are required to be stated to dispose of the applications.

3. By applications dated 1.12.04 (Cr.M.Applns. No.238/04 and 239/04) the applicant has prayed that N.B.W. be issued against the said accused for his appearance before this Court. In fact, although these petitions were filed on or about 12.8.03, the applicant has been unable to serve the said accused in these petitions and by Order of this Court dated 10.9.04 the records and proceedings of the said two criminal cases which were pending before this Court were remitted to the Court of the learned J.M.F.C., Vasco-da-Gama with liberty to bifurcate the trial against the remaining accused in accordance with the provisions contained in that respect in the Criminal Manual and to proceed with the trial of the remaining accused, in absence of the accused involved in these petitions.

4. It appears that initially this accused had approached the Court of learned J.M.F.C. for his exemption with a view to seek employment at Maldives. That application came to be rejected. As against the said order of rejection, the applicant approached the Court of Sessions, Margao, and then again this

Court.

5. By Order of this Court dated 24.3.98 the accused was exempted by imposing certain stringent conditions and one of the conditions being that the accused would give an undertaking before the trial Court that he will appear within three weeks of his Advocate being informed that the presence of the accused would be required before the Court. The other condition was that the accused would be represented at all times by an Advocate and in case the Advocate did not appear for the accused or withdrew his appearance and no other Advocate was replaced, the cash security would be liable to be forfeited.

6. Subsequently, by Order of the learned J.M.F.C. dated 8.3.2000 the accused was allowed to proceed for service probably at the address given in this petition, the other conditions stipulated by this Court remaining unchanged. The accused also gave an undertaking that he would appear within three weeks of his Advocate being informed that the presence of the accused was required by the Court.

7. It appears that thereafter the trial of the case started and the applicant/informant whilst her examination-in-chief was being recorded, made a statement that she would not be in a position to identify all the accused persons unless they were present together and they being cousins, looked similar, and, as such by Order dated 14.2.01 the learned J.M.F.C. directed all the accused to remain present.

8. However, on 3.4.02 when the case came up for hearing an application was made on behalf of the said accused showing his inability to attend the Court. It was also represented that the accused would appear in June, 2002 when he would be in a position to get leave from his employer. Accordingly the case was posted on 22.7.02.

9. As the said accused did not appear on 22.7.02, a N.B.W. was directed to be issued against him, but the said N.B.W. came to be returned unexecuted with the endorsement of the police Inspector dated 11.3.03 that the N.B.W. could not be executed, as the same was not issued at least three months in advance as required by the guidelines issued by the Ministry of Home Affairs.

10. As the said accused did not attend the Court as required and was otherwise also not present before the Court pursuant to the N.B.W. issued against him, the Court proceeded to forfeit the bail/cash security deposited by the accused. It appears that the court also proceeded to issue a proclamation which has been duly served. The Court therefore proceeded and passed an order in the roznama that the case against the accused would proceed under S.299 of the Code and as already stated against this order that the present petitions have been filed by the first informant.

11. Shri Sonak, the learned counsel of the applicant has submitted that no realistic attempt was made to secure the presence of the said accused before the trial Court by giving sufficient time to the police authorities to execute the said warrant. It is his submission that no coercive steps have at all been taken.

Shri Sonak also submits that the first informant had also filed an application dated 3.7.03 on which no orders have also been passed.

12. In my view although the learned J.M.F.C. has not passed a speaking order setting out the reasons which compelled him to proceed under S.299 of the Code, it appears that the learned J.M.F.C. after exhausting all the remedies available under the Code proceeded to pass the said Order. It is not disputed that the accused who is presently serving in Saudi Arabia did not attend the Court as required by the proclamation issued against him.

13. At the time of hearing, neither the applicant nor the learned Addl. P.P. who was requested to assist the Court have been able to place the guidelines issued by the Home Ministry under which warrants issued by the Courts in India are sent for execution in foreign countries. The records show that the learned J.M.F.C. has also issued standing warrant against the said accused and in case the first informant is keen and otherwise if the State is willing, the same can be got executed if permissible by the said guidelines by sending the same through the C.B.I./Interpol. In my view the order to proceed under S.299 of the Code against the accused in his absence cannot be faulted. Though no reasons have been specified by the learned Magistrate in support of the said Order, it is evident that not only the accused was first called upon to appear before the Court but then his bail/cash security was forfeited, a N.B.W. was also issued as well as a proclamation pursuant to which the accused did not appear. In my view there is no patent illegality nor any abuse of the process of Court for the said first informant to invoke the extraordinary jurisdiction of this

Court under S.482 of the Code which can be exercised in exceptional circumstances including to preventing gross illegality or abuse of the process of Court. There is no any type of illegality or abuse of the process of court. The extraordinary power under S. 482 of the Code is to be exercised sparingly and should not be allowed to be resorted to like remedy of appeal or revision.

14. In my view, there is no merit in the petitions as well as in the applications. Nevertheless as already stated, the State authorities would be free to execute the standing N.B.W. issued against the said accused in accordance with law and if permissible by taking assistance of C.B.I./Interpol. In case no orders have been passed on the application dated 3.7.03 of the first informant, the learned J.M.F.C. is hereby directed to deal with the said application as expeditiously as possible and in any event, within a period of sixty days from today, in accordance with law.

15. With the above observations, both the petitions and the applications are hereby dismissed.

N. A. BRITTO, J.

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